

Chapter 2.160
PURCHASING GOODS AND
SERVICES

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2.160.010 Purpose

The purpose of this chapter is to set forth procedures governing purchasing that benefit the city and its citizens, provide for the economical and efficient purchase of goods and services, and maximize the purchasing power of public funds.

2.160.020 Application.

This chapter applies to all expenditures by the city for public purchasing, irrespective of the source of the funds. When the procurement involves the expenditure of state or federal assistance or grant funds, the procurement shall be conducted in accordance with any mandatory applicable state or federal law and regulation and this chapter. Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

2.160.030 Definitions.

A. “*Business*” means any corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

B. “*Business day*” means any day when the city administration offices are open for public business.

C. “*Construction*” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine repair or routine maintenance of existing structures, buildings, or real property.

D. “*Contractor*” means any person having an agreement with the city.

E. “*Department*” means any city department, commission, committee, board, or agency requiring the procurement of supplies, services, or construction pursuant to this chapter.

F. “*Director of finance*” means the city’s appointed director of finance.

G. “*Employee*” means an individual drawing a salary or wages from the city, whether elected or not; any non-compensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city; and any individual serving as an elected official of the city.

H. “*Invitation for bids*” means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

I. “*Manager*” means the city’s appointed manager.

J. “*Person*” means any business, individual, union, committee, club, other organization, or group of individuals.

K. “*Procurement*” means the buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of agreement, and all phases of agreement administration.

L. “*Professional services*” means those services that are provided by a person skilled in the practice of a learned or technical discipline. Providers of professional services often require prolonged and specialized intellectual training, and profess attainments in special knowledge as distinguished from mere skills. Disciplines may include, but are not limited to, accounting, auditing, court

reporting, experts in a specialized field, finance, law, materials testing, medicine, and others.

M. “*Public agency*” means a public entity subject to or created by the city.

N. “*Purchasing agent*” means the director of finance or other persons designated in this chapter to procure supplies, services, or construction on behalf of the city.

O. “*Request for proposals*” or “*RFP*” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

P. “*Responsible bidder or offeror*” means a person who has the capability in all respects to perform fully the agreement requirements, and the experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

Q. “*Responsive bidder*” means a person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

R. “*Services*” means the furnishing of labor, time, or effort by any person, including professional services.

S. “*Supplies*” means all property, including, without limitation, equipment, materials, printing, insurance, and leases of real property, but excluding land or a permanent interest in land.

2.160.040 Purchasing agents.

A. The director of finance shall be the supervisor of the city’s purchasing procedures. The director of finance or designee shall act as purchasing agent. The manager may also act as the city’s purchasing agent at any time. With the manager’s prior approval, the director of finance may delegate authority to purchase certain supplies, services, or construction items to other city officials, if such

delegation is deemed appropriate for the effective procurement of those items.

B. Except as otherwise provided herein, the purchasing agent shall be responsible for the procurement of all supplies and services in accordance with this chapter.

C. In accordance with this chapter, and subject to the director of finance's supervision and the manager's oversight, the purchasing agent shall:

1. Procure or supervise the procurement of all supplies, and services needed by the city;

2. Sell, trade, or otherwise dispose of surplus supplies belonging to the city; and

3. In cooperation with the city department using the supplies and services, establish and maintain programs for bid specifications, specification development, inspection, review and acceptance.

2.160.050 Authority to use pre-approved forms; Authority of manager to sign some items.

The city council may authorize the manager to sign any agreement, purchase order, obligation, form, or other document that has been approved as to form by the city council. In addition, the manager has authority to sign all documents necessary to allow the city to make minimal purchases and small purchases, as defined in this chapter. Any contract or written obligations signed by the manager pursuant to this section must also be countersigned by a facsimile signature of the mayor and attested by the city recorder.

2.160.060 Bid evaluation.

A. *Generally.* Bids, proposals, and related matters shall be evaluated using the criteria in this section.

B. *City's evaluation process.* When evaluating matters, the city shall consider the following:

1. Solicitation criteria. The city shall consider the evaluation criteria stated in a bid or proposal package or other solicitation document.

2. Policy criteria. As further described in this section, the city shall consider whether a bid, proposal or other offer or submission is responsive to the city's request; whether the bidder or offeror is responsible; and whether any element conflicts with the other criteria of this chapter.

- (a) Due diligence. The city may take steps as it deems appropriate to verify and determine any matter. The city shall determine in its sole discretion what steps may be appropriate in light of the matters being considered and the resources of the city. The failure to discover any matter shall not preclude any subsequent evaluation or action.

- (b) Records. In the manner it shall determine, the purchasing agent shall retain in the procurement file records relevant to a solicitation or award; provided, however, that if the award contract is approved by resolution of the city council, the city recorder shall keep the procurement file records.

- (c) Evaluating responsiveness. To be responsive, a bid, proposal or other offer or submission must conform in all material respects to the terms of the city's solicitation documents. Such terms may include, without limitation, using bid forms, mandatory submittals, required securities, and appropriate substantive responses. Ministerial errors and other matters in a bid, proposal or other offer or submission will not necessarily render it non-responsive, and the purchasing agent shall review such matters and determine whether the submission is responsive. The purchasing agent may evaluate responsiveness based on any additional reasonable criteria.

(d) Evaluating responsibility. To be responsible, a bidder or offeror must have the capability in all respects to fully perform the agreement requirements, and the integrity, capacity and reliability which will assure timely, proper performance.

(e) Factors. The city may consider any relevant factors when evaluating responsibility, including, without limitation, the following:

(i) The bidder's capacity to perform the contractual requirements, including whether the bidder has available appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them. Without limitation, capacity may also include legal capacity to enter agreements, the ability to perform within required times, or the ability to perform any necessary future service and maintenance.

(ii) The bidder's ability, skill and quality of performance.

(iii) The bidder's character, integrity, reputation, judgment, experience and efficiency.

(iv) The bidder's ability to work cooperatively with the city, including, without limitation, whether the bidder has previously failed to comply with city agreements or other requirements; nonpayment of sums due to the city; poor working relationships with or adversarial actions against the city; prior suspension or other proceedings by the city against the bidder; or failure to assist the city in determining responsibility.

(f) Making a determination. The submission of any bid, proposal or other offer or submission constitutes an agreement by the bidder or offeror to reasonably assist the city with its determination of responsibility.

(g) Effect of determination. The city's determination of responsibility relates solely to a bidder's overall ability to perform for a

specific procurement, and is not a general assessment of a bidder's capabilities.

(h) Evaluating specific matters. For any bid, proposal, other offer, or submission:

(i) Tie bids. Tie bids occur when identical prices are submitted from responsive and responsible bidders and that price is the low bid. The purchasing agent shall make an award in a manner that is beneficial to the city, and may make an award in manner that will discourage tie bids. Such may include:

(1) Award to the person closest to the point of delivery.

(2) Award to the person who previously held the agreement.

(3) Award to the person with the earliest delivery date.

(ii) Only one bid received. If the city receives only one responsive bid, proposal or other offer or submission, the city may make an award to that bidder or offeror if the purchasing agent determines that the bid, proposal or other offer or submission is fair and reasonable and conforms to all applicable requirements, and that other prospective bidders or offerors had reasonable opportunity to respond or that there is not adequate time for a re-solicitation. The written determination and basis for decision by the purchasing agent shall be placed in the procurement file. Alternatively, the city may reject the sole bid, proposal or other offer or submission.

(i) Inspections and tests. The city may perform inspections, tests and other evaluations in any manner conducive to the city's interest, including, without limitation, the use of third parties. All prospective and actual recipients of a bid or agreement shall provide all reasonable assistance and information required by the city to perform any such inspection, test or other evaluation.

(j) Modifying submissions. After the time for submission, a bid, proposal or other

offer or submission may be modified as follows:

(i) Confirmation. When it appears a mistake has been made, or when the city desires an assurance of any matter, the city may request a bidder or offeror to confirm in writing such bid, proposal or other offer or submission.

(ii) Notification of Error. A bidder or offeror shall notify the purchasing agent of any error contained in a bid, proposal or other offer or submission within two business days after bid opening or the time for submitting proposals unless the purchasing agent waives this requirement. The purchasing agent shall have sole discretion to determine whether to permit any such modification or withdrawal.

(iii) Modifications by agreement. The purchasing agent may agree with a bidder or offeror to any modifications so long as they do not prejudice fair competition or the city's interests. Modifications may include such matters as the following:

(1) Time for accepting. The purchasing agent and bidder or offeror may agree that a bid, proposal or other offer or submission will remain effective for a longer period of time than that stated in the bid, proposal or other offer or submission.

(2) Subcontractor or supplier changes. Any proposed change in subcontractors or suppliers must be submitted to the purchasing agent, and the purchasing agent may reject any such proposed change. The bidder or offeror will receive no additional compensation as a result of a change to any subcontractors or suppliers, and must continue to meet the requirements of any federally-mandated program and other contractual and legal requirements.

(3) Change in specifications. The purchasing agent and bidder or offeror may agree to a change in specifications when

such change is in the city's interest, is reasonably related to the work originally solicited, and would not be prejudicial to fair competition.

(4) City's correction of ministerial mistakes. The purchasing agent may at any time correct mistakes in a bid or proposal that are of a ministerial or minor nature. Ministerial or minor informalities are clerical errors and matters of form rather than substance that are evident from the document, or insignificant mistakes or informalities that can be waived or corrected without prejudice to other bidders or offerors. They generally do not have a substantial effect on price. Examples include a failure to:

a. Sign the bid, proposal, or other submissions requiring signature, but only where they are accompanied by other materials indicating intent to be bound.

b. Acknowledge receipt of an addendum, but only if the materials demonstrate the bidder or offeror received the addendum and intended to be bound by it, or the addendum has a negligible effect on the bid, proposal or other offer or submission.

(5) City's correction of mistakes where the intent is evident. If the intent of the bid, proposal or other offer or submission is clearly evident on the face of the document, the purchasing agent shall correct it as intended and it may not be withdrawn. Examples include:

a. Typographical errors.

b. Errors in extending unit prices.

c. Transposition errors.

d. Arithmetical errors.

e. Differences in written and numerical prices (written shall control).

(6) No withdrawal for mistakes where intent is not evident. If the bidder or offeror's intent is not clearly evident on the face of the document, the bid, proposal or other offer or submission may not be

withdrawn except as agreed by the purchasing agent.

(7) Correcting errors in judgment. Errors in judgment may not be corrected, and the bid, proposal or other offer or submission may not be withdrawn, except as agreed by the purchasing agent. The purchasing agent may allow correction of an error in judgment if it can be done without prejudice to other bidders or offerors. The purchasing agent may allow withdrawal if it is in the city's interest.

2.160.070 Responsibility of bidders and offerors.

Bid and performance bonds or other security as specified on the city's bid form are required on all construction contracts in excess of **\$5,000** (or such lesser threshold as may be required from time to time by state law) and may be requested for supply agreements or service agreements as the purchasing agent deems advisable to protect the city's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

2.160.080 Right to inspect facilities and audit records.

The city may, at reasonable times, (a) inspect the part of the plant, place of business, or worksite of a contractor or subcontractor which the city determines is pertinent to the performance of any agreement awarded or to be awarded by the city; and (b) audit the books, accounting and any applicable records of any contractor or subcontractor.

2.160.090 Reporting of anti-competitive practices.

When for any reason collusion or other anticompetitive practices are suspected

among any bidders or offerors, a notice of the relevant facts shall be transmitted to the city attorney.

2.160.100 Pre-qualification.

Where deemed appropriate by the city, bidders, proponents and/or suppliers may be pre-qualified for particular types of supplies, services and construction to determine the responsibility of such persons.

A. *Standard of responsibility.* Factors to be considered in determining whether the standard of responsibility has been met by a bidder or supplier in connection with a pre-qualification include:

1. Availability of the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability of the bidder or supplier to meet all contractual requirements;
2. A satisfactory record of performance;
3. A satisfactory record of integrity;
4. Legal qualifications to contract with the city; and
5. Whether all necessary information has been supplied in connection with the inquiry concerning responsibility.

B. *Information pertaining to responsibility.* In connection with a proposed pre-qualification, the bidder, proponent or supplier shall supply information requested by the city concerning the responsibility of such person. If such information is not supplied, the city shall base its determination of responsibility upon any available information or may find the bidder or supplier non-responsible if such failure is unreasonable, as determined by the city.

2.160.110 Competitive sealed bidding.

A. *Conditions for use.* All city purchases shall be awarded and obtained by competitive sealed bidding except as otherwise provided in this chapter.

B. *Invitation for bids.* Each competitive sealed bid proceeding shall be commenced by the purchasing agent or designee issuing an invitation for bids, which shall include specifications and all contractual terms and conditions applicable to the procurement, and otherwise shall be in compliance with this chapter. All specifications shall be drafted so as to promote overall economy for the purposes intended and to encourage competition in satisfying the city's needs, and shall not be unduly restrictive. The policy set forth in this section applies to all specifications including, without limitation, those prepared for the city by architects, engineers, designers, and draftsmen.

C. *Public notice.* All noticing shall be processed through the city recorder or designee. Adequate public notice of the invitation for bids shall be given for a reasonable time, and not less than five (5) working days prior to the date set forth therein for the opening of bids. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

D. *Bid opening.* All bids shall be accepted and opened by the city recorder or designee. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, the name of each bidder, and such other relevant information as the purchasing agent deems appropriate, shall be recorded; the record and each bid shall be open to public inspection.

E. *Bid acceptance and evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include, without limitation, criteria to determine acceptability such as inspection, testing,

quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. Those criteria that will affect the bid price and be considered in evaluation for award (such as discounts, transportation costs, and total or life cycle costs) shall be objectively measurable.

F. *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or agreements based on such bid mistakes, may be permitted by the purchasing agent where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written, telegraphic or facsimile notice received in the office designated in the invitation for bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After the bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

1. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

2. The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or agreements based on bid mistakes, shall be supported by a written determination made by the purchasing agent.

G. *Award*. Award shall be made with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids, unless otherwise provided for in this chapter. Such notice shall be sent by mail, facsimile transmission, electronic mail and/or by posting on the city's web site.

H. *Multi-step sealed bidding*. When it is considered impractical to prepare an initial purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

I. *Cancellation of invitation for bids*. An invitation for bids or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the city's interest. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interests of the city. Notice of cancellation shall be sent to all persons responding to the solicitation, which notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

2.160.120 Competitive sealed proposals (RFP).

A. *Conditions for use*. When the purchasing agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the city, a purchase may be made by use of the competitive sealed proposals method described in this section.

B. *Request for proposals*. Competitive sealed proposals shall be solicited through a request for proposals ("RFP").

C. *Public notice*. Adequate public notice of the RFP shall be given in the same manner as provided in subsection 2.32.110(3).

D. *Receipt of proposals*. No proposal's contents, except for the names of the offerors, shall be disclosed to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after award.

E. *Evaluation factors*. The RFP shall state the relative importance of price and other evaluation factors, including the quantitative basis for evaluation. No criteria may be used in an RFP response evaluation that is not set forth in the RFP.

F. *Discussion with responsible offerors and revisions to proposals*. As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to have a reasonable chance of being selected in order to clarify and assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment to discuss and revise proposals in writing and such written revisions may be permitted after submissions and prior to award to obtain best and final offers. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors, except for the names of the offerors.

G. *Award*. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city, taking into consideration price and the evaluation

factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. The file shall contain the basis on which the award is made.

H. *Cancellation of an RFP.* An RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the city. Each solicitation issued by the city shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the city's interest. Notice of cancellation shall be sent to all persons responding to the solicitation

2.160.130 Minimal purchases.

A. *Applicability.* This section applies to the purchase of goods, supplies, materials, equipment or services having a total value of not more than **\$3,000**. So long as funds used for such purchases are part of the approved annual budget for the department making the purchase, a purchase order may be issued upon approval of the department head.

B. *Authorized parties.* Only the purchasing agent, department heads and employees designated by department heads may make minimal purchases under this section.

C. *Procedure.* Minimal purchases may be made by any reasonable means. Documentation shall be retained by the purchaser and archived in the individual department's purchase records to demonstrate reasonableness.

D. *Manipulation prohibited.* Purchases shall not be artificially divided into smaller amounts to fall within this section. Such prohibition includes, without limitation, awarding numerous purchases to a single person for substantially similar performances, or by dividing the work required for a single project solely for purposes of making use of this section.

2.160.140 Small purchases.

A. *Applicability.* This section applies to the purchase of goods, supplies, materials, equipment or services, having a total value of not more than **\$25,000**, when such purchase is approved in writing in advance by the head of the department making the purchase and the manager. So long as funds being used are available under the approved budget, no other approval is required.

B. *Authorized parties.* Only the purchasing agent, department heads and employees designated by department heads shall make small purchases as defined in this section. In making small purchases, the following procedures shall be used in lieu of a bid or proposal process:

1. *Solicitation and award.* Purchases shall be made by soliciting quotes from no fewer than three vendors. Such solicitation may be completed in any reasonable manner including, without limitation, telephone inquiry, internet search or other price comparison. Award shall be made to the vendor offering the lowest responsible quotation.

2. *Records.* Any department making a small purchase shall retain a record of the names of the prospective vendors contacted, those offering quotations, and the date and amount of each quotation, and shall document all quotes received.

C. *Manipulation prohibited.* Purchases shall not be artificially divided to fall within this section. Such prohibition includes, without limitation, awarding numerous purchases to a single person for substantially similar performances, or by dividing the work required for a single project solely for purposes of making use of this section.

D. *Small purchase modifications and renewals.* Any agreement solicited under this section shall not be modified in excess of the maximum dollar limit specified above, or renewed on a successive basis with the same party, without written

approval of the purchasing agent or the manager.

2.160.150 State contract purchasing.

Because an appropriate bid procedure has already been completed by the state of Utah, any item that is a state contract item may be purchased without following any otherwise applicable bid requirements, provided that the purchasing agent or department head making the purchase shall document the state contract number used and record that information in the purchase file.

2.160.160 Recent purchases by another government agency.

When purchasing supplies, material or equipment from a vendor who has been awarded a bid for the same items from another governmental entity within the preceding 90 days, the price paid by the other governmental entity shall be deemed to be the lowest price available for such items and the city need not follow any other bidding requirements, provided that the purchasing agent or department head making the purchase shall maintain in the purchase file appropriate documentation demonstrating compliance with the requirements of this section.

2.160.170 Contracting for designated professional services.

The city may procure the services of financial and legal advisors, architects, engineers, accountants, physicians, dentists, veterinarians, and construction managers as defined by the laws of the state of Utah, and similar professional services, as negotiated based on demonstrated competence and qualification and at fair and reasonable prices.

2.160.180 Contracts with other governmental entities.

Whenever the city agrees to make purchases together with another governmental entity, and the agreement is entered in compliance with the solicitation procedures of that other entity, the city shall be deemed to have complied with the city's solicitation requirements. Contracted services from other governmental entities are exempt from any requirements to obtain bids or quotes. Unless not legally required, all contracts with other governmental entities shall comply with the Interlocal Cooperation Act (UTAH CODE ANN. 11-13-101 *et seq.*) and shall be approved by resolution of the city council.

2.160.190 Sole source procurement.

A. *Definition.* Without limitation, sole source procurement may arise when:

1. The city needs a supply or service of a unique or specialized nature, and only one known supplier is reasonably available to meet the need.

2. Specific parts, accessories, equipment, materials, services, proprietary items or other items are necessary to meet the city's needs, and there are no comparable items reasonably available.

3. Items are procured for resale.

B. *Procedure.* To use sole source procurement, the purchasing agent shall place a written determination in the procurement file after conducting a good faith review of available sources, stating why no other sources are reasonably available, or why competition would not be likely to produce other acceptable offers. Sole source procurement shall not be used only to accommodate a desire for a particular proprietary item unless the city has a very specific need for such item which can be justified in writing. The city shall be deemed to have a very specific need when there is a need to procure matching or

compatible supplies and services and when other similar supplies and services would not be reasonably beneficial to the city's needs. The purchasing agent or designee shall negotiate and use appropriate means to obtain the best price available for any item procured under this section.

2.160.200 Emergencies, public threats and unforeseen conditions.

A. *Generally.* Notwithstanding any other provisions of this chapter, and conditioned on prior appropriation of necessary funds by the city council, the purchasing agent may make, or authorize others to make, emergency procurement of supplies, services, or construction items when there exists a threat to public health, welfare, or safety; provided that procurement in response to such emergencies, public threats or unforeseen conditions shall be made with such competition as is practicable under the circumstances. Procurement made on this basis shall occur as set forth in this section, subject, however, any contrary requirements of, or procedures under, Utah state law or any emergency management plan for the city from time to time in effect.

B. *Definitions.* The conditions specified in this section are defined as follows:

1. Emergency conditions. An emergency condition creates an immediate and serious need for supplies or services that cannot adequately be addressed using normal procurement methods. Such a need may arise by reason of a natural disaster, epidemic, riot, equipment failure or other reason.

2. Public threats. Public threats are circumstances that appear likely to adversely impact the public's health, welfare, convenience or safety. They may arise when circumstances appear to create a risk of environmental contamination, traffic congestion or hazards, disruption of utility or other public services, or other matters.

3. Unforeseen condition. An unforeseen condition creates a need to procure supplies or services within time frames that could not reasonably be anticipated or accommodated under normal procurement methods.

C. *Procedure.* The purchasing agent shall examine the circumstances and determine whether they constitute a condition set forth above. If so, the purchasing agent may take any action required by such condition. The purchasing agent shall place in the procurement file a written determination and explanation of the condition. Procurement should be as competitive as possible under the circumstances, but priority shall be given to meeting the needs of the emergency or combating the public threat. Only those supplies and services impacted by the condition in question may be acquired under this section.

2.160.210 Procurement protests.

Any actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract for procurement may protest the procurement by filing a written protest with the purchasing agent. The protest shall contain the following information:

A. The protesting party's name, mailing address and daytime telephone number, the signature of the protesting party or the attorney for the protesting party, and the date the protest is signed; and

B. The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.

C. Protests shall be submitted prior to the closing date for receiving bids or proposals unless the protestor did not know and could not reasonably have known of the facts giving rise to the protest prior to such time, but in any event, all protests shall be submitted within five (5) business days after

the closing date for receiving bids or proposals.

D. The city may proceed with the procurement despite the protest, except that the purchasing agent may suspend the procurement process for so long as he determines is appropriate.

E. The purchasing agent may designate another individual to assist in reviewing the matter, which assistance may include finding facts, analyzing the protest, and making recommendations to the purchasing agent.

F. The purchasing agent or designee may request additional information from the protesting party or from other persons to make a determination. The protesting party shall provide all information requested by the purchasing agent reasonably needed to decide the protest except information which is protected from disclosure by law, or which could reasonably be expected to result in unfair competitive injury to the protestor.

G. The purchasing agent shall review and decide protests, and shall issue a written determination to the protesting party within fifteen (15) business days of receipt of the protest.

H. The protesting party may appeal the written decision of the purchasing agent by filing a written appeal with the manager within five business days of the purchasing agent's written determination. The notice of appeal shall contain the following information:

1. The appellant's name, mailing address and daytime telephone number, the signature of the appellant or of the attorney for the appellant, and the date; and

2. The relief sought, a statement of facts and a recitation of the reasons and legal authority in support of the protest sufficient to permit review.

I. The manager shall review and hear the appeal. No later than five (5) business days after receiving a notice of appeal, the

manager shall schedule a hearing on the appeal. Unless otherwise agreed to by the city and the appellant, the hearing shall be held no sooner than five (5) business days and no later than thirty (30) business days after the date that the appeal is filed.

J. At the hearing before the manager, the appellant and the city's representative shall be allowed to testify, present evidence, and comment on the issues. The manager also may allow other interested persons to testify, comment or provide evidence on the issues.

K. No later than fifteen (15) business days after the hearing, the manager shall issue a signed order either granting the appeal in whole or in part, or upholding the determination of the purchasing agent in whole or in part. The order of the manager shall include:

1. The decision, and any reasons for the decision the manager may wish to provide; and

2. A statement that any party to the appeal may appeal the decision to the District Court.

L. If the manager fails to issue a decision within fifteen (15) business days after the hearing, said failure shall be considered the equivalent of an order denying the appeal.

M. The manager may appoint a person other than the purchasing agent to fulfill the manager's responsibilities under this section.

2.160.220 Sanctions.

A. It is unlawful:

1. For any bidder or prospective bidder, or city employee or city officer, in restraint of freedom of competition or otherwise, by agreement with any other person, bidder, or prospective bidder, to bid a fixed price, or to "rotate" bidding practices among competitors;

2. For any person to offer or to give to any employee of the city or any member of

his immediate family, any gain, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or other form, under circumstances in which it could reasonably be intended to influence him or could reasonably be expected to influence him in his duties concerning the award of any contract or order of purchase, or for any city employee to directly or indirectly solicit or directly or indirectly accept any such gift for such purpose;

3. For any city employee or city officer to disclose, in advance of the opening of the bids, the content of any bid invited through the formal competitive bidding procedure;

4. For any city employee or city officer to actively participate in the awarding of a contract from which he will directly benefit; and

5. For any city employee or city officer or other person to appropriate for personal or private use any item of public property.

B. Any city employee or city officer committing any of the foregoing acts may be discharged or suspended from employment, and the city may seek additional appropriate legal redress.

C. At the discretion of the city council, the following contracts are voidable:

1. Contracts which result from a conflict of interest under this chapter or other applicable law;

2. Contracts awarded to a person or firm that tried to influence the award of such contract by offering something of value to any city officer or city employee; and

3. Contracts awarded by a city officer or city employee circumventing the requirement of this chapter or other applicable statute.

The city council hereby declares its intent that such contracts would not have been entered into on behalf of the city if such misconduct had been discovered prior to the execution of the contract. In this regard, the

council further states that no city officer or city employee has authority, either actual, apparent or implied, to negotiate or execute any such contract and that such contract shall, at the discretion of the city council, be voidable, unless the action of the city officers or city employees in executing the contract is ratified by affirmative action of the city council after the misconduct was discovered and made known to the city council.

D. All persons or firms responsible for any misconduct prohibited by this section shall be liable to the city for any losses incurred by the city resulting from any contract awarded due to such misconduct.

2.160.230 Remedies for solicitations or awards in violation of law.

A. *Prior to bid opening or closing date for receipt of proposals.* If, prior to the bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the city attorney, determines that a solicitation is in violation of applicable law, then the solicitation or proposed award shall be canceled or revised to comply with applicable law.

B. *Prior to award.* If, after a bid opening or the closing date for receipt of proposals, the purchasing agent, after consultation with the city attorney, determines that a solicitation or a proposed award of an agreement is in violation of applicable law, then the solicitation or proposed award shall be canceled.

C. *After award.* If, after an award, the purchasing agent, after consultation with the city attorney, determines that a solicitation or award of an agreement was in violation of applicable law, then:

1. If the person awarded the agreement has not acted fraudulently or in bad faith:

(a) The agreement may be ratified and affirmed, provided it is determined that doing so is in the city's best interests; or

(b) The agreement may be terminated and the person awarded the agreement shall be compensated for the actual costs reasonably incurred under the agreement, plus a reasonable profit, prior to the termination; or

2. If the person awarded the agreement has acted fraudulently or in bad faith, the agreement may be declared null and void or voidable, if such action is in the city's best interests.

2.160.240 Petty cash accounts.

A. Petty cash accounts may be established in such amounts as are determined by the manager. The city's petty cash accounts shall be administered by the city recorder. Department heads or designees may authorize using such petty cash funds to purchase supplies, materials and equipment when the cost thereof does not exceed \$100 and when documentation of the purchase is maintained. Supplies, materials and equipment regularly purchased and available through the city's regular purchasing channels shall not be purchased using said petty cash funds.

B. Petty cash shall be reconciled at least quarterly.

2.160.250 Blanket purchase order.

Notwithstanding anything in this chapter to the contrary, the manager, purchasing agent or designee may arrange with suppliers blanket purchase orders which shall authorize continuing charges against the city. Such purchase orders shall be reviewed and renewed at least once each fiscal year. The manager, purchasing agent or designee shall, in advance of any transaction negotiated upon such blanket purchase order, notify the merchant or supplier of the specific city employee authorized to take delivery and sign the purchase order. No billing against the city shall be valid as applied against the purchase

order unless the person taking delivery was authorized to do so and the supplier can provide the city with a signature and printed name of that person.

2.160.260 Routine expenditures.

Notwithstanding anything in this chapter to the contrary, but subject to statutory compliance by the city's director of finance and treasurer, the manager or designee may approve for payment routine expenditures such as utility bills, leases and payroll-related expenses, provided that such expenditures are referenced in the then approved budget, that the funds are available for such expenditures, and that sufficient documentation is provided concerning such expenditures. The manager or designee also similarly may approve payments for supplies, non-professional and professional services and payments on city-approved contracts, provided that such expenditures are referenced in the then approved budget, that the funds are available for such expenditures, and that sufficient documentation is provided concerning such expenditures.

2.160.270 Payroll obligations.

Notwithstanding anything in this chapter to the contrary, but subject to statutory compliance by the city's director of finance and treasurer, the manager or designee may approve payroll checks prepared in accordance with a salary schedule approved by the city council.

2.160.280 Providing information and records.

A. Information and copies of records under this chapter may be requested from the city recorder pursuant to the Government Records Access and Management Act.

B. Quotations shall remain confidential until all quotations have been received, after

which they shall be available for public inspection if provided by GRAMA.

C. Sealed bids shall remain confidential until the bids are opened, after which they shall be available for public inspection if provided by GRAMA, except for information or data that the bidder designates as proprietary or confidential.

D. Sealed proposals shall remain confidential until an award is made. After award of a contract, the successful proposal shall be available for public inspection if provided by GRAMA, except for information or data that the bidder designates as proprietary or confidential.

2.160.290 Administrative regulations and policies.

The manager may prescribe administrative regulations and procedures which are consistent with the provisions of this chapter and other written financial procedures approved by the city council.